

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

RANDLE LEE WALKER,
Plaintiff,

v.

WARDEN O. MENDOZA, et al.,
Defendants.

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C.A. NO. C-05-476

**MEMORANDUM OPINION AND ORDER DENYING PLAINTIFF'S MOTION
FOR NEW TRIAL AND MOTION FOR PARTIAL NON-SUIT**

On August 31, 2006, the United States Magistrate Judge filed her Memorandum and Recommendation in this cause (D.E. 20). Objections were not timely filed. (D.E. 22). As such, the Court need only satisfy itself that there is no "clear error" on the face of the record in order to accept the Magistrate Judge's recommendation. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1420 (5th Cir.1996) (citing FED. R. CIV. P. 72(b) advisory committee's note (1983)).

Plaintiff moves (D.E. 18) the Court to amend or alter its final judgment entered on July 28, 2006 pursuant to Federal Rule of Civil Procedure 59(e) (D.E. 17). As the Magistrate Judge correctly noted, Rule 59(e) is properly invoked to correct manifest errors of law or to present newly discovered evidence. *E.g., Waltman v. Int'l Paper Co.*, 875 F.2d 468, 473 (5th Cir. 1989). Plaintiff does neither. His argument fails.


Plaintiff filed a motion for "partial non-suit" in which he expresses desire to abort his claims against defendants Mendoza and Ward (D.E. 19). There is no motion for non-

suit in federal practice. Plaintiff cites Federal Rule of Civil Procedure 41(a)(2) as authority to seek non-suit. The Court will treat plaintiff's motion for non-suit as a motion to voluntarily dismiss claims pursuant to Federal Rule of Civil Procedure 41. The Magistrate Judge correctly noted that claims against these defendants have already been dismissed with prejudice (D.E. 17).

The Court has reviewed de novo the Magistrate Judge's memorandum and recommendation and the pleadings on file. Plainly, no "clear error" exists on the face of the record. The Court hereby adopts as its own the findings and conclusions of the Magistrate Judge.

Accordingly, plaintiff's motion for a new trial (D.E. 18) is DENIED. Plaintiff's motion for partial non-suit (D.E. 19) is construed as a motion for dismissal and is likewise DENIED.

ORDERED this 6 day of November, 2006.


HAYDEN HEAD
CHIEF JUDGE